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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,853	05/30/2000	David E. Carlson	81001/101/101	1512

7590 05/20/2003

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EXAMINER

ST CYR, DANIEL

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/580,853

Applicant(s)

CARLSON, DAVID E.

Examiner

Daniel St.Cyr

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,13-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-9,13-16 and 18-22 is/are rejected.
- 7) ☒ Claim(s) 2, 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-8, 16, 18, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Neely et al, US Patent No. 5,164,575.

Re claims 1, 5, 7, 21, 22, Neeley et al disclose a blood sampling procedure and apparatus comprising: specimen tube 1 (article) having a first perception 3 (color coded stopper) with a first identifiable characteristic on a first surface and a second perception 34 (code label) or bar code 7 with a second identifiable characteristic on a second surface, the article is constructed to have only one identifiable characteristic viewable when house with a plurality of article (see figures 2, 5; col. 2, line 24-26, col. 5, line 17+ and col. 6, line 46+).

Re claim 4, wherein said first identifiable characteristic is a fist color and said second characteristic is a second color. (See col. 6, lines 62-65).

Re claim 6, wherein the packaging encloses said articles with an exterior surface of the tube rack 17 and wherein a portion of the exterior surface that is proximal to the alignment of said identifiable characteristics a marking (see figures 2, 5).

Re claim 8, Neeley teaches that the perceptions are incorporated onto the article during manufacturing (see figure 4 and col. 6, line 58-66).

Re claim 16, wherein said first identifiable characteristic is a symbol ( see col. 3, lines 55-66).

Re claim 18, wherein said article has a plurality of surfaces and wherein said first perception is provided by an identifiable characteristic comprising a shape of one of said surfaces (see figure 4).

Re claim 20, wherein the shape of the surface comprising said identifiable characteristic is a change to the perimeter of said surface (see figures 4 and 5).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neeley et al. The teachings of Neeley et al have been discussed above.

Re claim 9, Neeley et al teaching incorporating the perception into the article during manufacturing, but fail to suggest incorporating the perception after the manufacturing step. However, such sequence step falls within the engineering choice, failing to provide any

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unexpected results. Therefore, it would have been an obvious for an artisan to incorporate the perception after manufacturing in order to expedite the production of the articles. Therefore, it would have been an obvious extension as taught by Neeley et al.

Re claim 19, Neeley et al teach that different color stoppers are used to symbolize the different type of specimen, but fail to specifically disclose the identifiable characteristic is a topographical change to the surface. However, having specific designs to provide certain artistic change to the surface is an obvious engineering design choice, failing the provide any unexpected results. Therefore, it would have obvious for an artisan to modify the marking of Neeley et al into different symbols and designs so that the articles would be more desirable and be more identifiable. Therefore, it would have been an obvious extension as taught by Neeley et al.

6. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddock, US Patent No. 4,953,701, in view of Neeley et al. The teachings of Neeley et al have been discussed above.

Maddock discloses a fluorescent tube carrier for carrying a plurality of fluorescent light tubes comprising: a plurality of capsules 4 having a first and second ends 6, 8, for storing the plurality of light tubes 14, and the capsules may include signaling means for indicating new or used fluorescent tubes (see figure 1 and col. 4, line 62+).

Maddock fails to disclose a first and a second perception for identifying the light tubes.

See Neeley et al above.

In view of Neeley et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to employ the marking means of Neeley et al

onto the fluorescent tubes for identifying the tubes. Such modification would better identify the tubes and provide more effective means for signaling whether the tubes are new or spent.

Therefore, it would have been an obvious extension as taught by Maddock.

***Allowable Subject Matter***

7. Claims 2 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: Although the prior art of record teaches a system for identifying articles wherein each article includes a first and second perception attached thereon for identifying the article, the prior art of record fails to disclose or fairly suggests that the first perception identifies the article as being in a used state and the second perception identifies the article as being in an unused state or the article is capable of changing the first perception into the second perception when the article changes to a different state. These limitations in conjunction with other limitations in the claims were not shown by the prior art of record.

***Additional Remarks***

9. The examiner is regretful that the notice of allowance has been vacated. After further reviews of the application, it was concluded that the prior art of record meets the limitations of the claims rejected above.

***Conclusion***

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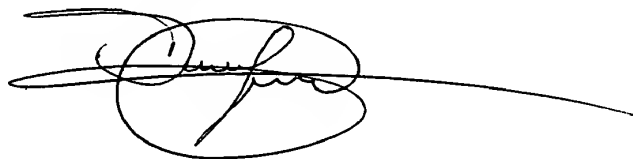
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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 703-305-2656. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7721 for regular communications and 703-308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Daniel St.Cyr  
Examiner  
Art Unit 2876

A handwritten signature in black ink, appearing to read 'Daniel St.Cyr', with a long horizontal line extending to the right.

DS  
May 8, 2003